

COMMISSIONERS PROCEEDINGS
APRIL 18, 2006
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stuart, Morris, and Boldt, Chair, present.

9:45 A.M.

PROCLAMATION

Commissioner Boldt read a proclamation declaring the week of April 23 through 29, 2006 as National Volunteer Week in Clark County, Washington.

PROCLAMATION

Commissioner Stuart read a proclamation declaring April 22, 2006 as Earth Day in Clark County, Washington.

10:00 A.M.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

PUBLIC COMMENT

Ron Lauser, Wedgewood Homes, commented that currently all of the county's urban service areas are dedicated to cities and Clark County has the ability with the sewer district to have all of the facilities that a city has. Mr. Lauser wanted to know if there was a reason that Clark County didn't have their own urban service area.

Morris responded that the names of the boundaries were initially determined by the 1994 Board and the names were not re-examined for the 2004 plan. She said the naming of urban growth boundaries was at the discretion of the County Board of Commissioners. She said an urban growth boundary can include more than one city and the only requirements for an urban growth boundary sizing is that you can provide the infrastructure that it meets population and density targets and has sufficient land available for job targets. She said there is no formal process for renaming, other than two votes from the Board of County Commissioners. She suggested Mr. Lauser could speak with Rich Lowry of the Prosecuting Attorney's Office, who is an expert on the GMA.

CONSENT AGENDA

There being no public comment, **MOVED** by Stuart to approve items 1 through 17. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 266)

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PUBLIC HEARING: BUSINESS PARK/LIGHT MANUFACTURING REZONE

The Board of Commissioners passed Ordinance 2004-09-02 on September 7, 2004 (Comprehensive Plan and Zoning Map Adoption), rezoning certain properties from Light Manufacturing (ML) to Business Park (BP) in the unincorporated area of the Vancouver Urban Growth Boundary. The Board rezoned a number of those BP zoned parcels back to ML by an emergency ordinance in 2005. The remainder of those BP zoned parcels are also being considered for rezoning to ML at this hearing.

The purpose of this public hearing was to confirm the rezoning decisions made by the Board through adopted emergency ordinances in 2005 and to also consider whether to change the zoning from BP to ML for certain properties.

Bob Higbie, Department of Community Development-Long Range Planning, provided a brief history of the issue. Higbie said a vast majority of property that was BP has been recommended for a rezone back to ML and the Planning Commission's specific recommendation was to support that rezoning and they also suggested that the board consider a dual zoning on some of the property that was zoned BP that would go back to ML.

Stuart said they are talking about a lot of land that was rezoned to Business Park from Light Industrial and the wanted to know when that was done.

Higbie said September of 2004.

Stuart stated that a lot of land was changed from Light Industrial to Business Park and he asked why.

Higbie said that based on an original run of the industrial land to see how much of the land was zoned industrial had a lot of critical lands on it; those lands identified as having a lot of critical lands were automatically rezoned BP.

Morris added that at that point in time if they were encumbered they were considered a Category III or Type III – tertiary. Because they were considered tertiary and were less likely to be used than if they were zoned something else.

Stuart wanted to know how many jobs had been expected out of the land before and how many jobs they would expect to get out of it as BP. In the 2004 plan, if they expected there to be more jobs in that area based on the rezone.

Higbie said yes, 22 jobs per acre for BP and 9 per acre on industrial.

Stuart wanted to know when the economic analysis had been completed.

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Higbie said that after the plan was adopted in 2004, they began to receive complaints about the BP zoning on a number of the parcels. He believed it was at that time this board decided to initiate a project, the first step of which was the emergency ordinances, and they then directed staff to work with the Planning Commission (PC), who had recommended developing some economic development criteria to evaluate what lands should be appropriate for Business Park or Industrial. *Higbie* noted that the information could be found in the board's packet.

Stuart said it seemed the process they've undergone after the original rezones would end up giving them a more accurate analysis of what kinds and how many jobs they could expect on that land and what makes sense given the landscape.

Higbie said he thought so, with the existing land they've been dealing with, but would also give them a better handle if they chose to look at the expanded urban growth boundaries and decided what ought to be either Industrial or Business Park, if they chose to do that.

Boldt asked for direction from staff regarding the Planning Commission's motion recommending all of the changes and the motion regarding dual zoning.

Rich Lowry, Prosecuting Attorney's Office, said the issue of dual zoning first came up at the Planning Commission and wasn't advertised and wasn't something the Board of County Commissioners could take action on. He said the only recommendation they have from the PC that they could implement was the recommendations for the zone changes to Light Industrial. *Lowry* said if the board was inclined to follow-up on the dual zoning recommendation that would be a subsequent and independent manner.

Boldt asked if they needed to decide by May 2.

Lowry said that was correct.

[Public comment opened.]

Scotty Clausen, 4906 NE 68th Street, referenced Map #3 and the 7 circled lots, which is where he lives. Mr. Clausen said he bought the lots as ML as an investment for his retirement and they were sold about a year and a half ago until the zoning changed to BP. He said he contacted the county and was told that he couldn't legally sell it because he owns under 10 acres. He asked that his property be zoned back to ML.

Boldt asked Mr. Clausen if he was in the emergency ordinance.

Clausen said yes.

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Stuart asked Mr. Clausen if anyone had talked to him during the time the former board was considering rezoning him to BP.

Clausen said no one contacted him and he didn't receive any notification.

Joe Arnold, 4710 NE 68th Street, commented that he was never notified about the zone change to BP and he can't do anything with his property; however, 100+ homes are being built. He said the zoning should be changed back to ML.

Boldt asked Mr. Arnold if his property was included in the emergency ordinance.

Arnold pointed out his parcel on map #3.

Higbie said that if his property is the one on map #3 and is south of St. Johns, all of that land is being recommended to be rezoned to ML.

Arnold added that they should also be able to put in truck and RV storage. He further explained.

Stuart asked if RV storage is an allowed use under Light Industrial.

Arnold said yes.

Morris asked that they delay this. She noted that she only received the Planning Commission minutes when she arrived in the morning and had not yet read them.

[Public testimony closed.]

There being no further public comment, **MOVED** by Stuart to close public testimony and continue deliberations regarding the Business Park/Light Manufacturing Rezone Project to April 25, 2006, at 10:00 a.m., in the Commissioners' Hearing Room, Public Service Center, 6th Floor. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 266)

PUBLIC HEARING: WETLAND

****Verbatim****

Held a public hearing to consider amending Clark County's Wetland Protection Ordinance.

BOLDT: The first – and I'm fairly certain that we will not have any formal action on this today, but we do have an ordinance in front of us. Just some parameters, I guess, on the

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testimony that we have received, thank you very much and we have a lot. We are changing the code so we're not making a new code, which is always—from the little bit I've been here—always a challenge of what is a change and what is new. Sometimes the new is actually better—well, depending on your point of view—than the existing. With that, could we have a short staff overview of the working group.

PATRICK LEE: Thank you, Mr. Chair. Two things that I'm distributing here, one Commissioner Stuart just asked me to share the list of the members of the working group with you again, and the second piece of information that I'm having distributed is a letter responding to the Department of Ecology's letter, which we received last week. We specifically wanted to respond to that because they were questioning some of the best available science rationale that we are supporting—the recommended draft of the wetlands ordinance—so we felt it was appropriate that we respond so that there was something written in the record.

In terms of the overall process, just a brief review, we had a technical group led by Brent and the three professional wetlands biologists that work in Clark County extensively, and other jurisdictions in the state of Washington as well. They were specifically there to advise on best available science issues. Their analysis was transmitted to a working group, which is the list of folks—sort of a broad cross-section of interests—that actually worked through the old wetland ordinance in light of the new guidance documents from the Department of Ecology and came out with the public review draft of the wetlands ordinance and that was then reviewed in work sessions, both with the board and the Planning Commission. We did some case studies to try and get a sense of what the impact of the wetlands ordinance changes that are proposed might be on develop potential associated with certain properties and common develop scenarios. Those were reviewed in public open houses, along with a sort of summary of key changes to the ordinance between the current ordinance and what was proposed. We then went back to the board work session on to the Planning Commission in February and the Planning Commission

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had a public hearing on February 16 and we received significant testimony, which is included in your booklets, and then closed the hearing and continued for deliberations to March 16 and made some revisions to the document, but I would say that there is quite a bit of consistency between what the working group had recommended initially and what the Planning Commission is recommending for approval by the Board of County Commissioners.

In terms of the major changes between the two ordinances, the Applicability Section is one where we've had some testimony. The current ordinance triggers a formal wetland permit review in conjunction with subdivision short plat, site plan or grading permit applications. Now some projects do end up at some state trying to obtain those types of permits; however, the applicability is broadened in the recommended ordinance and specific changes that are probably significant is that in addition to those approvals that I mentioned, building permits would also be subject to review under the ordinance as recommended by the Planning Commission. We have added a Reasonable Use Exceptions that is very consistent with what is in the proposed habitat ordinance, and we consciously tried to align those through the process. Largely those types of issues are to address some of those difficult situations where we could get into takings discussions with individual property owners. So, for example, if a wetland was mostly or fully encumbered a legal building site, we are not going to deny someone the right to build a home even if it encroaches into the wetland. Mitigation would be required for reasonable use exceptions.

In terms of exemptions, there has been a lot of discussion of some exemptions. One of the exemptions is for small wetlands. Our current ordinance indicates that Type 2 and Type 3 wetlands, 2,500 feet...or less than 2,500 square feet in size are exempt. Category 4 wetlands less than 10,000 square feet or exempt from the wetlands ordinance—that is the current ordinance. The proposal excludes Category 2 wetlands exemptions; it maintains the Category 3 exemptions up to 2,500 square feet; and for Category 4 exemptions the

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threshold is reduced to a tenth of an acre, or roughly 4,350 feet. A tenth of an acre is generally the level of wetland impact at which point the Army Corps of Engineers may have jurisdiction over a wetland fill application, for example. Another area of exemption is for existing agricultural activities that has had a lot of discussion. The proposal is that for those active operations in effect at the time of adoption of the ordinance, they are exempt from regulation under the wetlands ordinance; however, it is recommended specifically for riparian wetlands that have habitat values that they be regulated under the proposal habitat ordinance. The reason for that is that the board had pulled together a habitat conservation ordinance advisory group specifically to address the issue of agricultural operations and how they may or may not be regulated under the habitat ordinance. So it seemed reasonable to default to that more intensive process. A third area of exemption that has received some discussion is an exemption that allows a limited number – I believe it's up to five cubic yards of disruption of wetland. We feel that's a reasonable diminimus standard and so there is an exemption there, although there have been some comments suggesting that...some interests do not support that.

In terms of the wetlands rating system itself, I think of all the changes this is probably the biggest variable because it is a new wetland rating system that rates on the basis of wetland functions and values, which is somewhat of a change from the current procedure and there is significant state guidance. We are largely consistent with the state guidance and the Planning Commission recommended version of the draft where we vary – well, in terms of the rating, I would say that we are consistent with that. In terms of how the rating translates into wetlands protections measures, depending on the rating and depending on the land use intensity of the proposed activity that is triggering the wetlands permit, those two are compared and if you have a high quality wetland and a high intensity activity proposed you are going to have a larger buffer area. If you have a lower quality wetland and a less intense activity proposed, you are going to have a smaller buffer. We tested this through the case studies to get some sense of what of...instances, wetland ratings jumped, say, from a Class 4 to a Class 3; in some instances, they reduced from Class 3 to Class 4.

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So it may work both ways based on the new system. One of the other aspects of the new system is that I think the new wetland rating system when assessing the functions takes in a greater degree of associated wetlands than might the current ordinance, so it looks at sort of a broader scale of what that wetlands system is when pulling together the wetland rating.

BOLDT: Pat, when you say you tested it...field tested it, went out...

LEE: Yes, we had Brent and our technical committee went out and applied the new rating system to actual wetlands where we had information on what the ratings were under the current system and then Tim Schauer of MacKay Sposito, and Paul Weller volunteered to lay out typical develop scenarios, given what that new rating would do in terms of triggering buffers, etcetera, to see what sort of impact there might be in terms of the wetlands. I would say in general there was some amount of developable land lost in those case studies in most of them, although it ranged from maybe one to two percent to six to seven percent. So there is some variation how it plays out. We wanted to understand better the sensitivity before moving forward with the decision.

The next area that I would call attention to is in terms of wetland mitigation. Again, we are consistent with the state guidance and the hierarchy of first you avoid, then you try to minimize and then if you still have unavoidable effects, you may go to mitigation.

Mitigation's preference is first onsite; second, within the same watershed; and third, offsite. You're typically trying to replace the same sorts of wetlands, although at some point if that's not possible you may replace out of kind. So that is consistent with state guidance. Also consistent with state guidance is the mitigation ratios that are proposed in the ordinance, and the mitigation ratios have increased from the current ordinance. There is some ability for staff to work on specific projects and entertain some flexibility there; however, in general, the mitigation standards are higher. So, for example, instead of a 2 to

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1 replacement you may have to go to a 3 to 1 replacement, or higher depending on what type of mitigation you are doing.

Finally, in terms of the permitting processes itself, there are a couple of things we tried to do. We did introduce some Type 1 wetland permits that would address residential uses, that would address home business uses, and buffer modifications—that is new. We also introduced a programmatic permit that might be most useful to maintenance of utility corridors, or for wetland improvement projects. Again, that was largely the work of the Habitat Conservation Ordinance group that met and what you see in the draft habitat ordinance and what you see in the recommended draft of the wetlands ordinance is very consistent with one another in those areas. So that is the overall summary of the changes I will present. I'm certainly happy to respond to any questions.

BOLDT: Questions?

BETTY SUE MORRIS: I have a whole lot of varying degrees of complexity and importance. The first one is—and I think, Mr. Boldt, hopefully you'll sympathize with me. This is exactly the kind of an ordinance for which we would have hoped to have a fiscal note. We don't have it yet. Also, in line with the money part of it, I noticed that you have changed fees. Were you intending for those changed fees to be a part of adoption?

LEE: Yes, those changed fees are specifically to address the new permit types that we are introducing since we don't have a permit type for a Type 1 wetland permit, or a programmatic permit in the fee schedule at this point in time.

MORRIS: I'll tell you right off the top that I'm uncomfortable doing that right now because we don't have any proof, and we have in our efforts in the past to quantify and qualify the price for permits, we've asked for provability on man hours and those kinds of things and at least we don't have any here in the notebooks, so that we would need to

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have. So those are the financial parts of it. I would anticipate that...I mean there is discussion here about adding new staff and I wouldn't want to indicate that that's necessarily a part of adoption of the ordinance; that adopting the ordinance does not suggest that we're automatically going to go add new staff; that's what the fiscal note would be for. We would have to see that.

LEE: We recognize that. We're just suggesting that some of the implications based on our analysis of both what is needed to better implement the existing ordinance, even if there were no changes, plus the additional work associated with a new one, could be enhanced by some additional staff resources and we would be proposed to prepare some decision packages through the budget process, but not expecting that at this point in time.

MORRIS: That's what I understood, but I guess the point is—and this is obviously going to require more, but even for a Type 1 permit – you're assuming I don't know how many new Type 1 permits as a result of implementation of the ordinance, but I'm assuming you are going to get a number. So, again, that fiscal note that quantifies some kinds of things for us would be extremely helpful. Then, if we could just walk through the ordinance little by little, Mr. Lee, first of all, on page 2 –

LEE: Are you working on Exhibit A?

MORRIS: Yes, Exhibit A, Planning Commission Recommendations. A forest practices conversion permit is regulated here. I believe those were exempted from the existing habitat ordinance. I don't know if they've been included in the revisions to the habitat ordinance, but forest conversions are not GMA. Critical area ordinances...

LEE: Yes, they are...forest conversion permits regulated by 42.60.080 – that is our Forest Practices section that would get to the conversion. So it is regulated there. We do

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also have an exemption for those that are not under current county jurisdiction; that exemption would basically default to the DNR process.

MORRIS: Well, I remember when we were adopting the forest conversion code we had a significant argument at the very last minute about whether or not it was going to be subject to the habitat ordinance, and the WDFW at the time, as I recall, had threatened to appeal it and of course it's not appealable because it's not a GMA required code, the forest conversion.

RICH LOWRY: We recently addressed this in the habitat ordinance by including in the exemption under sub(i) reference to the county code. So the exemption would apply to forest practices under either the state regulations or the county code, with the exception of conversion applications and conversion option plans. Conversion options plans are generally exempt other than in, I believe forested wetlands, there is some regulation. So we need to have the same language in this exemption as is being crafted for the habitat exemption and, again, this is late work unfortunately.

MORRIS: Yeah, and since we haven't adopted the HCO, then we get ourselves in a box where then you say that you have it in the wetland so you have to have it in the HCO. Okay, well, that will be something to talk about more. Beginning on page 3 and in several places thereafter, you have used the words "will not" instead of "shall not", and in some sections you've purposefully stricken "shall" and substituted the word "will", and I'm particularly looking at line 11 on my page 3. Why?

LEE: That was a recommendation advocated strongly by one member of our working group, who happened to be a lawyer and felt that there was some uncertainty in the interpretation of the term "shall" and that "will" was more clearly addressing the intent.

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MORRIS: So it was a commissioner who was a member and the other two converting down [laughing]. Okay, well I find that a curious argument because linguistically the word “shall” is an imperative and the word “will” is promissory so...

STUART: Hopefully he'll testify on it. He had this big long dialogue about why...he went to some conference and all the lawyers decided that “will” was better than “shall” so we'll let him talk about it.

MORRIS: Oh, that's even better. I'm going to move to return to “shall” all the way through.

[Laughing]

MORRIS: Okay, then I want to move down that page a little bit, and it ties in with the reasonable use discussion that you were having about the size of the building envelope and the reasonable use provision. It's certainly my hope that this is not the kind of language that survives in the HCO in the agricultural module because I think there are much better ways to talk about reasonable use when it comes to the agricultural module than to talk about reasonable use in terms of building envelope, and I think that's not actually on this page, it's someplace else. What I guess I'm wondering is that needs some kind of parameters on it from my perspective because we've already seen circumstances where a five-acre parcel is so encumbered that the building envelope is about 20x30 – I mean, that's the building envelope that's left. So that part of it is troublesome and I'm not sure that I've got a suggestion on how to do it, but it's got to do with that reasonable use and the building envelope and what's left, and other things like that, particularly for a residential development. Also, on page 3, line 33, this is “rural land divisions may utilize the cluster provisions,” —is that all resource lands, as well as rural residential? All land is rural if it's not urban, so does that need to be changed to rural residential?

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LEE: That would be consistent with cluster –

MORRIS: Why do you even need to say that? I mean, obviously if it's rural residential, you can cluster it. I mean, is there an answer?

LEE: Yes, it would be correct. I think the cluster provisions deal primarily with rural residential, not other rural categories.

MORRIS: So this line 33 is intended to apply only to rural residential, not to rural resource?

LEE: Yes.

MORRIS: Okay, and since they can already cluster, do we need this line?

LEE: The line was specifically added at the request of the Planning Commission because the Department of Ecology had questioned the exemption from rural subdivisions where we have an exemption that says – or a reasonable use provision that says that we will not limit the number of rural lots that would be entitled under the ordinance. So they were wondering what checks we have in the system and we thought it would be good to point to our cluster ordinances, one provision that is specifically developed, to try and address those types of issues.

MORRIS: So this is to do something nice for the Department of Ecology? I mean that's fine because we want them to do some nice things for us too.

LEE: Yes, I think it enhances their understanding of the ordinance.

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MORRIS: Okay, that's fine. Then down from that, line—and this is the worst of the pages, with line by line, I promise you—but down on line 37 I somehow read that to mean that a public agency can get away with things; private can't. Did we intend that?

LEE: No. I think there are things that we feel meet the standard. In terms of exemption, there are other things that we feel might best be directed either through individual wetland permits or through the programmatic permit. So there are a variety of options available to address utility issues; however, I think our concern is that if denial of the ability to provide services results in too much a restriction and what can happen on some of the land, then we should address that in this particular provision.

MORRIS: I understand utility completely. I guess it's just public agency, which is us, or anybody that's a public agency...

LEE: We do develop roads and sewage treatment lines and things, so.

MORRIS: Okay. I'll come back to that one later because I don't need to do it right now. I have an overall question that will get to the interfacing grids between quality of wetland ranking and use. Let me just get to that one now. Could you do, Mr. Lee, for the board an analysis of the county-owned property at WSU, that WSU has right now for its extension service on 78th Street, just to the east of I-5; and can you assume that the county will either do a heavy – well, assume we would do a mixed use development on that property. Could you do an analysis of it, roughly, in the next week and let us know what the difference is between the way the existing ordinance would work on that piece of property and the proposed ordinance, and whether or not we get any special treatment under the provisions that I just read to you about public agency – “it shall not be used to deny a public agency.” That will give me the best idea I can possibly have about the difference on the ground because we've done a lot of work on that site and we've had a lot of analysis, and we have a fairly good understanding of where the wetlands are now

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and what the quality of the wetlands are, what transportation issues are. And it's large enough to be a mixed use.

LEE: Okay, we'll do that.

MORRIS: And that would be the most intense use I can imagine might occur on that site. Thank you. Thank you for your indulgence, Mr. Chair. That's it.

BOLDT: Thank you very much. Pat, there's two days of – or two nights of the Planning Commission—and I'm picking on my old boss—but they do a motion and then they talk for about four days after the motion and then I can't figure out what the motion they voted on. What was the motion to us? Was it to approve exactly what we have in front of us?

LEE: Yes, there are two aspects to what I would consider the motion: one is the exhibits that are before you that say "Planning Commission Recommended Draft." They are recommending that they be approved in that form; the second is captured in the staff report and are kind of the side issue discussions that they've identified. One that got a lot of discussion from the Planning Commission was the interface between wetlands and stormwater facilities, and so they had suggested a side issue that they would like to call specific attention to that perhaps there are better ways to integrate those to as opposed to the very sort of "let's keep them apart" and that seems to be the Department of Ecology's position at this particular point in time; that very limited use of wetlands for stormwater treatment of any sort, etcetera.

BOLDT: So it's my understanding—before we get to public testimony here—is that we have the Planning Commission's recommendation; we have your responses to the Department of Ecology's letter, which may or may not include some code changes in this; and we have the assignment you just received from Commissioner Morris, plus I think

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future-wise give us some code changes and probably more. We put all this together, what's a real target date that we should go for of final adoption?

LEE: We could have the information together by next Tuesday, if you want it.

BOLDT: Everything?

LEE: Yes.

BOLDT: Okay. Do you have any questions?

STUART: They'll come up.

BOLDT: Okay, we'll start. Thank you very much. Thank you for your time. We're very interested in code changes and exact wording. We will start off with Jerry Beale.

JERRY BEALE: Thank you for this opportunity. My name is Jerry Beale. I live at 14700 NE 160th Avenue, in Brush Prairie. Water is precious. We need to protect the resource. We were at an event at Wood Landing and a gentleman from the Yakama Nation talked about how they make decisions and one of their decisions is they think about seven generations. I think we would be well served to think about that in applying this wetland ordinance. I hope we have learned that covering natural wetlands and creating unnatural wetlands as mitigation does not work 90% in the state of Washington. Why? Because the unnatural wetlands are not built to any design standards. They just do what they want apparently. No one monitors it and they're not held responsible when they do fail. We need a strong ordinance with teeth and staff to follow it up. We can no longer stand for raping and pillaging of our resources. Although we need jobs, they are useless without clean air and clean water.

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BOLDT: Thank you very much. Bill Zimmerman?

BILL ZIMMERMAN: My name is Bill Zimmerman. I own BI-ZI Farms. My address is 9504 NE 119th Street. This ordinance has some very serious ramifications for agriculture in Clark County and I have a question, number one, I've asked Mr. Lee why was agriculture not included at the table on the discussions of this or the building of this ordinance at all? But that's neither here nor there. In agriculture here in Clark County, we've lost virtually all of the Class 1, Class 2, and most of the Class 3 soils. We're now down to farming poorer soils, wetter soils, and steeper slopes in order to try and keep any agricultural operations going.

The question I have is really one I've asked Mr. Lee before; I don't know as I really got a clear answer from him. I do have a concern on this. I realize agriculture is listed as exempt or as not regulated, but I do worry because there are conditions where in agriculture we need to be able to go in on a farmed wetland and drain it or put agricultural tile in to be able to better manage and better operate that land. I guess the question I have is—and I do worry about this—does this open us up, or allow us to better utilize or, in my terms, enhance that Ag land—because it's being called Ag land—does this allow us to go in and enhance that for an agricultural operation? Do you know?

LEE: If it is an existing agricultural operation, you're operating it this year, then yes, it's exempt from the regulations and you would be able to go in and work with that wetland without having to face the wetland regulations.

ZIMMERMAN: Okay. That's –

LEE: The one exception is whatever happens with the riparian wetlands issue.

ZIMMERMAN: Yes, that's correct. Okay, thank you very much.

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BOLDT: Did that clear it up?

ZIMMERMAN: Yes. Thank you.

BOLDT: Don Wastler –

MORRIS: Excuse me just a second. Would expansion of existing agriculture – would that be subject to –

LEE: If you were expanding the footprint of an ongoing agricultural operation that would encroach into wetland that was not currently being encroached in, yes the full force of the wetlands ordinance would apply. Again, there is—depending on how the habitat ordinance plays out—there is a provision in the draft habitat ordinance where in the riparian areas if you do the farm management plan option, you could increase that footprint by twenty-five percent through that farm management option without facing additional regulations, but you would have to make the assurances that the functions and values of the regulated wetlands – or wetlands with habitat value are being respected.

MORRIS: But that's not included here now?

LEE: At this point if it's an existing –

MORRIS: That expansion provision is not included?

LEE: No, no, if Mr. Zimmerman is not in riparian wetland and...or just choosing to expand his operation into a wetland where there currently isn't an activity, then yes the full ordinance would apply.

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LOWRY: There are really two issues that I think apply to the existing agriculture in terms of consistency between the two ordinances, or the consistency between the exemption in the wetland ordinance and the habitat ordinance. One is what you are talking about now, and that is the ability to expand under the proposed habitat language; the other is what does existing mean? The Farm Bureau has suggested that existing ought to include farm operations that have occurred historically even though they may currently be dormant. So that would be an issue that the board will have to struggle with when you take up the habitat ordinance. The existing proposed ordinance—as does the exemption here—requires that the agricultural activity be occurring on the day of adoption of the ordinance.

MORRIS: Thank you, but I guess that you might be prepared because I will suggest that we include provisions here similar to those in the habitat ordinance that allow for expansion of existing agricultural footprint by twenty-five percent, if they have the management plan, because that would make it consistent and otherwise you're going to jeopardize a whole lot of agricultural potential. We've had this discussion on the WRIA planning water reservation issue about reserving enough water for the potential for Ag to expand, but if they can't expand because of wetlands, they can't expand.

LOWRY: What I think I would recommend is that we put language into the exemption indicating that existing has the same meaning of existing under the habitat ordinance, which would include both the issue of expansion and the issue of when the Ag activity had to be —

MORRIS: That's fine.

LOWRY: — in other words, you just defer to whatever policy decisions are made under the habitat ordinance.

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MORRIS: That's fine.

BOLDT: Pat, I just—excuse me, Don, I just have a small question about agricultural activities: does that have also crop conversions? If you converted one crop to another, one activity to another—more intense—would that just be included under...you're still exempted –

LEE: You would still be exempted if the wetland is already impacted by the agricultural operation so it would have no bearing on a conversion from one crop to another.

BOLDT: That's good to know. Okay, thank you. Don?

DON WASTLER: My name is Don Wastler. My physical address is 8811 NE 212th Avenue. As I read this ordinance number that you have there this morning and listen to Mr. Lee's statement, it sounds to be me like you've pretty much got all the bases covered. There's only a couple of things I'd like to bring up. In connection with the wetlands is the forest up and the mountains and the more the forest would cut, the more water runs off that increases the size of the wetlands and the entire water system itself loses control—erosion, soil washing away, damage to the environment. I think that the timber management—whatever they call management...I guess that depends on who's managing it—goes along with the ordinance and at the same time through the hearings that I've heard and the statements I've heard, no one has brought up issues where some of these tricks that people have used in the past to get by wetlands, for example, our neighbor behind us there whole field was soaked and what he did was go out there with a bulldozer back in the 70's and dug a big whole in the middle of and it all drained in and he's got a nice pond out there. It's still, I guess, what you would consider wetlands, but it's not as wet as it was. China Ditch was another attempt to try and drain off a lot of areas that were wet so I'm not sure exactly what you've got here to prevent people from getting by with their little tricks so they might get a wetlands reclassified for some particular purpose that

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they have in mind. I'm sure they would have to get a permit for that; it would just matter who is going to issue the permit. From what I see here this morning, other than the two things I just mentioned about the forest – Summer Hills, we should have learned a lesson from that and now they're constructing Autumn Hills up there and that's having an impact and if we don't do something about it, before long the whole county's going to be a wetlands, from what I can see – the way the water runs down after they cut that timber up there. Anyway, thank you very much.

BOLDT: Thank you for your comments. Paul Mattila?

PAUL MATTILA: My name is Paul Mattila. I live in the north part of Clark County and I've been involved in many areas of usage of land: berry farming, farm forestry, timber harvesting. I've also been involved in building activities and have a lot of experience in many different areas. I believe in a clean environment. It's not that I have a protest against trying to keep the water clean and the air clean because we breathe the air and we've all got to drink water, and we've got to try and be the best stewards of the earth's resources. However, I have a concern about over-regulation and oppressing the populace in the usage of their lands. I can show on the map specifically one area about one acre in size that's listed as a wetland that is no wetland at all. So I don't know who drew these maps up, but sometimes there's mistakes made that could cause a landowner a lot of problems in the future. I would like to caution against making any crushing regulations that anger the people and make criminals out of the common, law-abiding citizen in the usage of his land. I have another concern about the meeting being at ten o'clock on a working day morning when the honest, hardworking, taxpaying citizen that has concerns about this cannot attend this meeting and voice his concerns. As far as the environment goes, I know that part of the wetlands and water regulations has to do with the fish runs. Like I say, I've been 55+ years in the environment and I've been a keen observer—sometimes I pick up on things that even the experts can't pick up on. As far as the fish runs go, I think the environmentalists have done more damage than good in depleting our fish runs and I

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won't get specific, but the predators, for instance I'll point out one that nobody hardly knows about: Merganser ducks. You go on the river and you watch a Merganser duck. A salmon is a salmon, whether it is six inches long or it is three feet long and those Merganser ducks are out of control when they consume a lot of fish, besides the [inaudible] and the seals and such like. I've also seen the damage that has been done to our game populations by environmentalism. Over a population of predators, devastating and marauding our herds. I guess that's all I have to day. I wish the best for you and do what's best for the public. Don't do what's best for certain individuals, but do what's best for the long-term good and do not oppress the citizenry.

BOLDT: Thank you very much. Alex Mattila? Good morning.

ALEX MATTILA: Good morning, County Commission; Pat Lee; Administrator; and Brent. My name is Alex Mattila. My address is PO Box 243, Brush Prairie, Washington, 98606. I'm here representing myself, my family, and numerous friends and relatives in the timber industry and in the farm industry. The ones that I know couldn't be here today because of the odd timing, as my father suggested, of this meeting. We have an existing ordinance that presumes guilt on behalf of the landowner that has not been proven and I've talked with county staff—and with all due respect to the county staff, I believe that they are trying to do the best job that they can with the mandate that they've been given—but they have not been able to identify an existing problem or a destination that we're trying to head to with this ordinance, nor has there been proof that the existing ordinance is even working according to its supposed plan. On top of that we're adding more restrictions to the existing ordinance, such as higher mitigation standards.

We cite the Department of Fish and Wildlife and the Department of Ecology and the question I have is, under what legitimacy to these organizations have and what authority do they represent to be accepted as an authority to present suppositions such as best available science on these matters and tell us in Clark County – us landowners – how

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we're going to manage our land? The landowner owns the land, not the Department of Fish and Wildlife or the Department of Ecology. As far as my own land, I own it and I will manage it how it best suits me and my family, while making sure to try and be a good steward in relation to the environment and my neighbors so as to not have, or minimize adverse impacts on them. We in Clark County who have land are smart individuals. We didn't get our land by accident; we got it because we worked hard for it and worked by the sweat of our brow to earn the money to buy it. As a taxpayer paying my taxes, and because of that, the Department of Fish and Wildlife and the Department of Ecology exist and have chosen through elected officials such as you that these departments would serve us. In the current proposals and suggestions, they are not serving us. They are in essence asking the landowner to justify his own existence on his own land to see whether the landowner should make use of it or if it should be turned over to the fish, plants, and animals. How stupid can they be? It's a complete waste of our tax dollars. They should be managing public lands. With these types of proposals and suggestions that they propose, which are unlawful, it's time the Department of Fish and Wildlife and the Department of Ecology be investigated. They clearly need to justify their own existence.

Commissioner Boldt, Commissioner Morris, Commissioner Stuart, when you accepted the duties of your office you swore to support the constitution and the laws of the United States and the constitution and laws of the State of Washington. You are to ensure that the law is safeguarded and not subverted; protected and not perverted. If you refer to the hand note that I gave you, first of all refer to the Washington State Constitution, Article 1, Section 1, regarding Political Power: "All political power is inherent in the people and the governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights." If you go down to Article 1, Section 3, Personal Rights: "No person shall be deprived of life, liberty, or property without due process of law." If you go down to Article 1, Section 16, has to do with Imminent Domain. It says, "Private property shall not be taken for public use except for private ways of necessity and for drains, flumes, or ditches on or across the lands of

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others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefore be first made in money or ascertained and paid into court for the owner irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury unless a jury be waived as in other civil cases in courts of record in the manner prescribed by law.” And if you open up the copy of the United States Constitution—I folded the pages over so you could find it easily—if you go to the Fifth Amendment of the Constitution, it speaks about people and if you go down toward the end of the Fifth Amendment, “People shall not be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” If you go down from there to the Tenth Amendment on the next page, “The powers not delegated to the United States by the Constitution or prohibited by it to the states or reserved to the states, respectively, or to the people.”

We live in a time of advanced technology and advanced intelligence and why do these proposals become more and more non-sensical? Any power or authority not given to the government remains with the people. We have not given, nor are about to give or even considering giving up, our power and authority over our land to anybody, and if we want to do that we will sell our land. Until then if someone wants to see people turn their land over to plants and animals, tell them, “welcome to America. You have the freedom to go buy your own land and then give it to the plants and animals.”

This ordinance attempts to restrict or take for another purpose the use of private property from its owner or owners and does not provide just compensation for that. Therefore, it is unlawful and you must stand by your oath of office and reject unlawful proposals such as this or install a just compensation amendment into this proposal. All policies, regulations, and ordinances must be constructed in accordance with the laws of our land, the

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Constitution and laws of the State of Washington and the Constitution and laws of the United States. Thank you.

BOLDT: Alex, I just have a couple of questions.

MATTILA: Yes, sir.

BOLDT: You refer to our ordinance, that you're taking land from a private property owner for another purpose?

MATTILA: Yes.

BOLDT: Is that in our ordinance?

MATTILA: Well, specifically what I'm speaking to is when you restrict the use of someone being able to use their own property for another purpose. In other words, the other purpose would be to serve the desires of a wetland ordinance or a critical habitat ordinance. That's what I'm talking about: taking it from a private property person being able to use it in what they deem as the best use to serve their needs, and turning it over or making it non-usable for them because an ordinance that comes in the place of an existing ordinance. Is that clear?

BOLDT: Yes. I would just ask that if you have some specific questions – this is our ordinance and we're going through it and right now it probably looks like sausage, but we're working between you and everyone else. So I see what you mean. Thank you. The one question I do have though is, where does an appeal go of this ordinance?

LEE: Excuse me, what is the appeal?

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BOLDT: Yes.

LEE: Most often a wetlands permit is sort of considered along with whatever the specific permit may be, be it a subdivision or whatever the situation may be, and it would follow that appeals process if there was a challenge to the wetlands delineation, for example.

MORRIS: Mr. Lowry, I think Mr. Lee is talking about application of the ordinance and what happens if a property owner doesn't like the application of an ordinance, or disagrees. Is that what you were asking about?

BOLDT: Yes.

MORRIS: Or were you asking about how someone could appeal this ordinance before implementation?

BOLDT: No. If something is denied within the ordinance.

LOWRY: Additionally, of course, is the ability to appeal the ordinance on its face to the Growth Management Act. In terms of an appeal if the appeal is dependent upon its application – if somebody is saying that as applied to me it constitutes a taking, for example, the ordinance does have the reasonable use provision which is intended to try and guard against an over-reach of the ordinance, but the Examiner does not have the authority to actually apply the constitutional takings standards; he applies the ordinance. So, ultimately, if there was a conclusion by the property owner that there was a taking, it would have to be in court.

BOLDT: No, I guess my question was simpler: You're denied access, whatever, it goes to the hearings examiner and then goes to us just like a regular –

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LOWRY: Absolutely.

BOLDT: Okay, thank you. Ron Lauser?

RON LAUSER: Ron Lauser, Wedgewood Homes. Mine's a little simpler question. The wetlands ordinance that you have in front of you is tied together with a lot of things from the habitat ordinance and I'm wondering why these two ordinances aren't being handled side-by-side, so that you can see the ramifications [tape cuts out briefly] setbacks to the wetland areas, things like that.

BOLDT: Actually, we're handling them close to side-by-side. I suppose we're not handling them together because we want to get out of here by tonight. I see your point and I think we wrestle with that too. You know, you've got two that come together and they both affect your land, but everything is kind of tied to –

LAUSER: Your designations in the wetland ordinance I find – you have certain designations, you have land that a dairy might have out there where you have wetlands maybe created by animals that are working the soils enough so that the water can't go down in so you have land that might form ponds during the winter time, but basically its created and its not flowing anywhere. How are you handling those kinds of lands out there that this ordinance might take in and then your habitat ordinance is going to cause more affect.

STUART: There's a definition of wetlands that's included as amendatory code amendments for the wetland ordinance and it actually talks about that. It talks about saying its wetlands or not – “those artificial wetlands intentionally created from non-wetland sites including, but not limited to...,” and it gives a long list of things, including farm ponds and those kinds of activities. So those pieces of it are specifically – our code is specifically amended to address that and to make sure that it's only what we would

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consider non-created wetlands, except for created wetlands that were done as mitigation, but it's everything that's been created other than that which was created from mitigation is not a wetland under this code amendment. Correct me if I'm wrong on that, Brent.

BRENT: That's correct.

STUART: So it is covered under our code amendments to make sure it is a relatively limited –

LAUSER: If there are ponds that are formed out there because of –

STUART: Farm activity like a bunch of cows running around on it, yeah.

LAUSER: – that are formed because of dammed streams, so they've actually dammed the stream to form a pond, are those dropped from a Class 4 to a Class 3?

STUART: Brent, can you answer that?

BRENT OR LEE?: Actually, if there's clear evidence that there was no wetland there prior to the damming, then it would be exempt.

LAUSER: But if there was wetlands there and would classify as a Class 4 and they have dammed it and it is now a pond, which puts it into a Class 3, then which classification does it actually fall under.

BRENT OR LEE?: The ratings system rates based on current condition so we have no way to go back and examine the historic condition. We just don't have enough information to apply the ratings system in that fashion.

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STUART: I'll give you a reverse example, I mean you talked about someone making a better wetland, I have a lot of people who are concerned who have talked to me being concerned that using the existing gives people a license to degrade the wetlands until adoption so that you get historically it was a Class 1 or Class 2 wetland, but because of degradation, it's now a Class 3 or Class 4. We're using existing conditions for the rating and not going back to historic conditions even though they may have been much better, which is probably more prevalent than people who have made a wetland better. I would say that there's probably more degradation, given the limited number of Class 1 wetlands that we have in our inventory that we've shown. I think you probably see more going [tape ends...] We only have what we have to be able to judge it by so the argument back and forth was well, okay, since we don't have historical information on that then I guess we just have to use what we have right now. That was why they came to that compromise.

BOLDT: Okay, thank you. Robert Dean?

ROBERT DEAN: My name is Robert Dean. I live at 7101 NE 74th Avenue, Vancouver. I'm going to criticize this proposal. I don't think that this is what you asked for. I don't think it represents what you asked for. I think what you asked for was something based on best available science and I think what you got was a political compromise. I think it's a political compromise between the developers and the environmentalists or the people well concerned about environmental interest and the people who weren't [inaudible] in developing. I think the whole process that has gone through from the Task Force through to the Planning Commission, and right here before you now has been a discussion between environmentalists and developers. Today you are starting to hear from property owners, but property owners have not been a part of this process. You sent back to the Task Force to make exhibits of the impact of this new ordinance on properties – on the developability of properties. That is what they produced. There are no examples in their case studies of what Commissioner Morris mentioned: what effect is this going to have

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on a building permit application? Where building envelopes have now been so restricted that somebody who's bought a piece of property and has spent thousands of dollars on architects, wants to retire and build their dream home and now find that they've only got a building envelope that will allow them a thousand square-foot home. Under this ordinance, they're out of luck. And under this ordinance you would say that we are still allowing you reasonable use of that property. We didn't take all of your property. You can still build a thousand square-foot home there. And then you're going to say, well, but, we didn't take anything. It's like somebody stealing your wallet, taking out all of the cash, and handing your wallet back, then saying we didn't take your wallet, we didn't take everything. We just took the cash.

BOLDT: So, Mr. Dean, you're a surveyor?

DEAN: Yes.

BOLDT: Do you have specific – I think we would be very interested in specific situations of that. And you don't have to give that right now, but –

DEAN: Well, I would think that you could send this back to the Task Force and have them present examples where not just developers are being affected, but every citizen in Clark County is being affected by this. Every building permit application is going to have to be reviewed and then some of them are going to be taken out and its going to be up to the responsible official to decide if it's likely that there is a wetland, or even a buffer, somewhere on this property. If there is a wetland, or the likelihood of a wetland or wetland buffer on this property when somebody comes in for a building permit application, then he's going to have to say, "well, you need a wetlands permit." Seven-hundred fifty dollars for a wetlands permit, that's nothing. You're going to have to get a wetlands delineation. Wetlands delineations do not come cheap. I don't know what they cost...probably \$2,000. If it's a big piece of property that you want to build on, you're

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going to have to build it on the area on that property that causes the least amount of impact to the wetlands, and you know there are wetlands here and wetlands there. You're going to have to map all of them to show that here, I'm building it on the best spot. That's going to cost tens of thousands of dollars. You don't have enough wetlands biologists to handle every building permit application that is going to come to you, let alone the complaints. In the Columbian, they asked Brent, I believe, if this applies to a [inaudible...to a barn?] and he said it would not come to the attention of the county unless there was a complaint. So if there is a complaint, you're going to have to handle it and somebody is going to have to decide is this a wetland or not?

BOLDT: So you have...coming back to the existing ordinance, what you are saying is that the existing ordinance is working fine and the new one will not work.

DEAN: The existing ordinance only applies to short plat subdivisions and grading permits [inaudible]. Somebody wanting to build a house or wanting to do anything on an existing piece of property is not affected by the wetlands ordinance as it currently stands. That is the main objection I have to this; that it takes out that triggering application. Pat Lee, at the Planning Commission meeting, warned the Planning Commissioners that this greatly expands the applicability – it's right on the front sheet, applicability. This is now applying to all land-disturbing activities and construction of all structures in the county located within a wetland or wetland buffer, or on a site containing a wetland or wetland buffer.

BOLDT: Okay. That's good. That's what we need to know and that's come back to your fiscal note –

DEAN: Then whether or not any permit or application is listed below is required. So that's chicken coups; that's replicas of the Golden Gate Bridge. The triggering applications are even expanded. Now you've got building permits thrown in. This is not

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just greatly expanding; this is a [inaudible] change—this is huge. It is just alarming to me that when I was at the planning Commission meeting, I spoke and Alex spoke. Everybody else – this aspect of it was not even discussed by the Planning Commission and it was not discussed by the task group, as you can see by the examples that they gave. All the examples were on development.

STUART: Couple of things: first, just to respond to what you just said about the Task Force and the Planning Commission not talking about it, in our Planning Commission minutes there was a long discussion about applicability and our attorney got involved; our staff got involved; the Planning Commission spoke about it. There was a long discussion about the applicability of the ordinance because it was a change and people were trying to figure out what do we do with this. As far as the work group goes, part of why they started having the conversation at the Planning Commission was because the work group actually suggested further applicability. You talked about wanting to have best available science and that we had asked for best available science and that instead we got a compromise. Well, actually if you want to talk about best available science then why would you not talk about any activity that's going on within a wetland? Why would it be triggered only under certain applications? If a wetland is a wetland and you're going to want to look at the impacts on the function value of wetlands, why would you have a specific trigger that wouldn't include everything?

DEAN: Well, the best available science now has been applied to the wetland itself, but you've done more than that. You've applied restrictions on buffers around the wetland. There is no best available science; there's no discussion anywhere in here on what the effect of a wider or a lesser buffer is; it's just assumed that if you have a 300 foot buffer, it's more protection than a 25 foot buffer.

STUART: Well, I think that if you read the ordinance that actually what it says in the ordinance is that there are multiple ways to protect the function and value of the wetland

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itself and that the focus of the ordinance is not on protecting the function and value of the buffers; that we are only talking about the function and value of the wetland itself. A buffer is one way to get you there, but that we talk about higher value buffers being able to give you minimization of the buffer width; we talk about lower impact development being able to provide you with minimization of the buffers; we talk about exemptions for certain kinds of wetlands that are isolated and small and don't have the kind of function and value that you would expect to see from a larger and more contiguous set and, frankly, DOE disagreed with us on that and having those exemptions. What I would say is that from the work group's perspective, the reason that they talked about having this broad applicability and broadening that out—broader than what the Planning Commission recommended—was because there were so many exemptions that we built in, and so many minimizations that we built into the draft ordinance that was moved forward. That was the balance to say, okay, well, we're after protecting the function and value of the resource itself. Let's define it and let's protect just that. Let's not go nuts with the buffers themselves; the buffer is not the point. So if there is something specifically that we didn't address, I would love to get comments from you specifically on how we might do that better and we're going to continue this so we have a little bit of time to get that from you. I would love to it because I think that might add value to it.

DEAN: Let me just concentrate on the Category 4. In the present ordinance there are protections on 1, 2, and 3. This one is protecting Category 4 also and from what I can see there is no difference in the wetlands themselves, discounting the buffers. There is nothing that you can do in a Category 4 wetland that you couldn't do in a Category 1 wetland.

STUART: Do you guys want to address that at all?

LEE: I would say that there is, in terms of meaning what you want to do, some sort of development activity –

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DEAN: Whatever.

LEE: I would say that the way the ordinance is structured, there is a higher avoidance standard built into the Category 1 and 2 wetlands than the Category 3 and 4 wetlands. So I do think there is a greater level of protection and less flexibility in what you can do when you have those higher value wetlands than if you have a Class 3 or 4 wetland.

BOLDT: In the existing ordinance, is Category 4 mentioned?

LEE: Yes, there is a Category 4. There are certain activities that are not regulated in Category 4 and there is the exemption for a Category 4 wetland up to 10,000 square feet, which is proposed to be ratcheted down to a tenth of an acre in the proposed. So there are definitely some changes in the regulation of Category 4 wetlands that are proposed as a part of this ordinance.

DEAN: From what I can tell from reading this draft ordinance, there is no difference – the only difference is in the width of the buffer and there's nothing you can do in the buffer of a Category 4 wetland that you couldn't do in a Category 1 buffer.

STUART: Actually, you can have stormwater facilities in the buffer in a Category that you couldn't have in a Category 1.

DEAN: So there's a compromise that was made for the developers.

STUART: It was something that was done based on the science. The rapidly evolving science regarding stormwater is that we've seen that there are filtration methods that you can provide within a buffer to filtrate stormwater runoff. By the time it gets to the wetland it's cleaner than when it started so that you're watering the wetland and at the same time

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providing for the facilities that would otherwise take up lots, and take up space on somebody's developable land.

DEAN: [inaudible] I deal with small property owners day-to-day and I'm speaking here myself as a property owner who is also being directly affected by this and so I don't want to get into the discussion of –

BOLDT: Okay, thank you. Comments?

MORRIS: I do want to make a comment. Mr. Dean, you are right. This is an extensive expansion of the applicability. It's also an extensive escalation of cost to the applicant and that ought to be included in the fiscal note because it requires levels of technical evaluation that haven't been required before and it asks for them earlier than they were asked for before. So that means to us that we have to be good enough to evaluate those that are more complex and come earlier and are more expensive. You are absolutely right. This is a vast expansion to a whole lot of areas that have not been touched before and to be perfectly honest with you in reading through it last night I was thinking to myself that this is going to make it impossible for me to put a fence around my yard for my son's dog to play when it comes over. So it is a massive expansion. There are a number of people sitting in this room today whom I know personally and to whose homes I have been who couldn't build their home today if they were trying to build it under the provisions of this ordinance. So if you're out there right now and think to yourself, could I live where I live if this ordinance had been in place at the time I built my house? The only thing I'm meaning to say is to agree with you on your assessment of the complexity and the expanded applicability of the ordinance.

BOLDT: Okay, thank you. We appreciate your comments –

DEAN: There's one little point that I would like to –

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BOLDT: We only have ten minutes left.

DEAN: – being a land surveyor we have to locate the boundaries of these wetlands and we do that in conjunction with the short plat or subdivision; we're already doing a survey so we're already out there and have our crews ready. As soon as the wetlands biologist sticks in his flag then we can map it and designate the buffer. If you were to take another wetlands biologist out there the next day, he would put his flags in a different spot. The amount of – these lines are not well defined. These are fuzzy, wide lines. They may be fifty feet wide. They could take up the whole buffer. By doing a short plat we can say, okay, this is it. This is where the biologist says it is; here's your buffer. But for you to come in later and say you built your house in the buffer of this Category 4 wetland, they'll say no, I didn't. You're not going to be able to prove that he built his land in the buffer of a Category 4 wetland because you don't know where the boundary of it is.

BOLDT: Okay. If you have suggestions to clean this up, let us know.

DEAN: Yeah, take out Category 4 wetlands.

BOLDT: Just let us know. Thank you. Val Alexander?

VAL ALEXANDER: Val Alexander. 2404 NW Coyote Ridge Road, La Center. I'm a property owner and I've already turned in a little note to you. I just want to expand on it a little bit. I do keep my property for habitat. I like making places for animals and perhaps fish to reside. I also raise timber on it. On the upper part of my property I do agriculture, where there's more sun. I don't have a problem with the wetlands ordinance with my sixty-five acres. I feel like I don't have the right to make my downstream neighbors properties less valuable or destroy any part of that. I'm hoping that you'll be able to gather some resources for increased monitoring and enforcement of the wetland

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ordinance. I agree with almost everything and I hope you'll do everything you possibly can to assist the farmers to work with this so that they can continue to operate. And the problems with people trying to build a house on five acres, to me that's further evidence that five acres is too small of a parcel to develop a house on, especially if it's near wetlands. I just -- as you were commenting about how many houses we couldn't build now do to these restrictions, well maybe some of those were mistakes that were done in the past and I'm surrounded by a lot of them -- five-acre parcels. Maybe we should learn from that and not make the mistakes in the future.

BOLDT: Thank you very much.

STUART: One comment I'd like to make before people start believing it to be true, is that people would be allowed to build houses on those lots. You talked about Commissioner Morris -- you had mentioned wondering how many people would be able to build homes still. The reasonable use exemption specifically deals with if you would otherwise not be able to because you're encumbered by wetlands being able to build a home on your land; that you would not be taking peoples use of their land away where they wouldn't be able to actually build a home on it. So I just wanted to make sure that was clear, that there was no intention by the work group or the Planning Commission, and I can't speak for them, but there was certainly nothing in the minutes to indicate that they wanted to take away people's rights to build a home.

MORRIS: That's not what I meant at all. There are subdivisions all over this county that couldn't be built today because of either the habitat ordinance—and there will be more as a result of the wetlands ordinance and there are rural subdivisions that couldn't be built because of the wetlands ordinance. There are a lot of things that are not going to be built and there are a lot of houses that people live in right now that would not have been allowed to be built had this ordinance been in place at the time they were built. So I'm talking retrospectively here about the impact.

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STUART: That makes sense.

MORRIS: Yes, because that is the case and I'll let it go at that.

BOLDT: Thank you. Richard Kennon?

RICHARD KENNON: Can Gretchen go ahead of me?

BOLDT: Yes. Come on up, Gretchen.

GRETCHEN STARKE: Thanks to Richard. My name is Gretchen Starke and I live at 308 NE 124th Avenue in Vancouver, and I am Conservation Chair for the Vancouver Audubon Society. I looked through this ordinance and there didn't seem to be much change between the version the Planning Commission started out with and this one. In fact, hardly any at all. I'll just refer you to the previous testimony I handed in on February 16, which I assume you did go over. So I will just expand and elaborate on a few of those. The exempted wetlands: I wanted to talk about the small wetlands...building on. You might not be doing anybody a favor by allowing that person to build on a small isolated wetland. I got to thinking about my own house and you know how it is when you don't realize something at first until maybe twenty years later? My house was probably built on a small isolated wetland. Being young and naïve when we bought the house, we didn't quite understand the significance of the horsetails and the reeds in our yard. My husband did part of the landscaping; constructed a dry stream in an effort to direct drainage away from the house—we knew that much. Every winter we would fight this excess condensation, taking towels and wiping the windows down, bringing a fan to blow moisture off. We just thought that was a part of living in the Pacific Northwest and it wasn't until twenty years later, as the condensation diminished and then ceased, that I realized, hey, that was a wetland. So you would be...[inaudible] allowing the homeowner

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to have problems with condensation, with mold, with the house settling. When they built the apartments in Mill Plain One behind the houses across the street from me, they had to use pile drivers. Woke me up early one Saturday morning. That must have been because the land was squishy wetlands. Is this really a good thing for the person who's actually going to live there? I'm not so sure.

I like the idea of classification of uses and different use intensities. As I mentioned before the Planning Commission, there were two that should be shifted to a higher classification. The staff disagreed, apparently. One house per five acres should not be considered low in my opinion, and in the opinion of a lot of the people. You've got pesticides, impervious surfaces, and children and pets impacting the wetlands, and so on.

Comments on mitigation: mitigation is necessary. We fully realize that a person must be allowed to have a reasonable economic use of his land or be able to build his house on it, but the county is well within its rights and the DOE and the Fish and Wildlife, and the legislature gave them this authority to be sure that what the landowner does doesn't harm his neighbor. So out of kind mitigation should be rarely used. Preservation of wetlands as a form of mitigation – I mean it is a great thing to preserve wetlands, but aren't you in effect allowing the developer to say, if you allow me to destroy this wetland here, I can preserve the wetland over there. So you have a net loss, you don't have any gain really. I assume that along with the mitigation, with the preservation component, that the developer would have to improve the function and value of the preserved wetland. Otherwise, there's actually a net loss.

Monitoring: monitoring has to go on for longer than five years. We agree with the DOE on this. Even a simple ecosystem—a plain wood lot—if not monitored and cared for over a lengthy period of time, will not come back. And I can offer that as an example: a natural area near my house, which is now in the city, has required replanting and tending to and it still hasn't come back. Not as it was. Monitoring reports should be submitted quarterly,

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once for each season. Further, the county or some other public agency should inspect the mitigation project at least once a year. Of course I realize this is fiscal impacts at a time when certain elements of the public want government services without paying for them and that is a problem, but this is to do the best job you should.

We hardly approve of the provision for financial assurance; that if your mitigation fails, at least the public won't be totally out. My final remarks are more philosophical. The commissioners must keep in mind that the purpose of a wetlands protection ordinance is to protect wetlands and while neither nor we want to create undue hardship for anyone, the purpose of the wetlands protection ordinance is not to protect landowners and developers, it is to protect the wetlands. People should be able to use their land, but they must use it in such a way that it will not harm others—either their neighbors or those who come after in the future. Your freedom to swing your fist ends where my nose begins; your freedom to do what you will with your land ends when you are shoving your stormwater off onto your neighbor's land. Or selling your land to a homeowner who's going to find lots of problems in the future. So if this wetlands ordinance fails to protect wetlands, it will be [inaudible], but it is a vast improvement over what is now and I certainly urge your adoption of it with just a few changes.

BOLDT: Thank you very much. Richard, would you like to speak? We're out of time, but we can have a couple of more.

KENNON: Richard Kennon. I live at 37814 NE 234th Avenue, Yacolt, Washington. Commissioners, thank you for allowing me to speak at this time. I'm kind of wearing two hats today. I'm speaking for the Native Fish Society and I'm also with the Lower Columbia Fish Enhancement Group. Something was brought up – I don't have my notes, but you're all aware that our fish runs are down to about that far of what they used to be. We have four or five percent of what historically used to be here. In the same way if you don't protect the wetlands, they will eventually become an endangered species so you

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might want to think of it that way. I'm here to share on how to make this a better tool on how to manage wetlands. I want to see a healthy Clark County, which means keeping wetlands and critical habitats. I have a question before I go any further: what I say today and what I hand into you will supply the critical habitat ordinance that you'll be hearing next Monday so I don't have to do it twice?

BOLDT: Yes.

KENNON: It will save you some time [laughs].

BOLDT: Yes.

KENNON: Thank you. Wetlands are important because they store water and prevent flooding, a huge problem we've seen this time of year. They replenish our drinking water. When wetlands are developed, rainfall can't soak into the ground and people are left without enough water in their wells; lakes, ponds, and our streams. You're asking for examples: along 239th and 244th, running out west of Battle Ground, that whole farmland along there is a huge aquifer that soaks up a lot of rainfall and it's one of the few sources of water that's left of the East Fork during the summer time. So that's an important piece of area right there that provides a lot of fish protection. Wetlands improve our water quality by filtering out sediments, chemicals, oils, and other pollutants. They provide a place for fish, plants, and animals to survive, which improves our quality of life especially those of use who enjoy fishing, hunting, and being outdoors.

Another example is the Lower Columbia Fish Enhancement Group did some projects out on School House Creek on Lower Washougal Road, and it runs through a gigantic wetland there and in partnerships with Washington Trout, we built a small two or three foot damn right near the road where the beavers used to dam it up and sometimes wash out over the road. So we put a beaver barrier in there and kept a permanent wetland in

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there, which is a huge rearing nursery area for Coho Salmon. It's made a huge difference just from that little project.

Some key points: Clark County has invested in salmon recovery and supports recovery; wetland protections are vital to protecting clean water for people, salmon, and Steelhead. You have provided over twenty million dollars in investment of the East Fork of the Lewis River. The wetlands work group's version of the ordinance, plus the Department of Ecology's comments is the best protection for our wetlands. Require buffers based on best available, not arbitrary calculations, which can severely weaken the protections. Do not exempt small wetlands or current farmed wetlands; a properly crafted exemption for existing farming can work. Exempting wetlands just makes it easier to convert them for development. Poorly planned developments cost taxpayers dollars and threaten our quality of life. This update gives us a chance to preserve our drinking water, protect fish and wildlife habitat, and recharge aquifers—and we just had one aquifer here in the county and it's being petitioned right now to make it that way—and it reduces flooding. That's why I urge you to adopt this strengthened wetland protection ordinance.

I recommend that your permitting fees include the cost of providing county staff to oversee the permitting is done correctly. Another option is to consider having your building inspectors trained and as part of the job to have a check off sheet to see that the procedures are being followed correctly while they're out there doing other parts of the job—that might be a way to save a little money at the same time. The way the monitoring goes right now is basically that the developer and the property owner files a report every year and most of the people here are good stewards of their land, but there are the exceptions that don't follow the rules and not only their lands, but they impact people who live around them. I urge you to have somebody from the county checking these projects every once in a while to make sure that they are following the rules, are built properly and no damage is being created.

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BOLDT: Is that all?

KENNON: No.

BOLDT: We're out of time...summarize please.

KENNON: Well, I'll hand in everything I've got here. Just real quickly then, there's a publication called the **Rusted Shield** and it was commissioned by the [inaudible] foundation in the year 2000. It studied the failure of all the agencies in Puget Sound in salmon recovery—and I have copies for you. They have quite a section in there on the failure of mitigation for replacing wetlands and for the agencies not even checking on the permitting to see if anything was done correctly. Between sixty and ninety percent of the wetland projects were a failure. They didn't do what they were asked to do. So it's very important that if you're going to make this work, you've got to get out there and check it once in a while. That's the bottom line.

BOLDT: Okay, thank you. I look forward to your comments.

KENNON: Thank you.

BOLDT: Lora Caine? You're the last one to sign up.

LORA CAINE: [comments inaudible]

BOLDT: You're sure? Okay, is there anyone here wishing to testify?

DAVID MORYC: I'll make it brief. Hi, my name is David Moryc. I'm here representing the members of American Rivers in Clark County. I support, by reference, the comments that Future Wise and Native Fish Society have submitted. Just a couple of things, and it's

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kind of themes that I've talked about before, and those are related to ongoing—and Richard kind of referenced them also—ongoing efforts that the county has made and commitments that they made that we support to salmon recovery and the relationship between the critical area and [inaudible] and strong critical areas ordinances and salmon recovery planning. American Rivers works really hard to fight for funding that then gets trickled down to Clark County and the local groups that spend that money on investing in salmon recovery and healthy watersheds and clean water, and all the rest of it. We'll continue to do that and I think it's just important to make that connection because the Lower Columbia Salmon Recovery Plan, which the Clark County Commission supported—as did all of the other Lower Columbia Boards of Commissioners signed onto—calls for strong critical area ordinances, including wetlands. So I hope that when you keep in mind and make the decisions that are tough about existing agriculture—and I think protecting agricultural as viable in Clark County is really important—but as you keep that in mind, try to make those linkages. And kind of echoing what other folks have talked about, enforcement and education are really key. I don't have to tell you guys, but in terms of coming up with creative solutions to get local people to work together it's been some of the success of salmon recovery and it's come from the ground up. So if you can find some creative ways to look at enforcement and education, I encourage you to do so.

BOLDT: Thank you.

MORYC: Thank you.

MORRIS: I have a question. Are you participating at all in the Cowlitz County critical areas ordinance process?

MORYC: Yes, Cowlitz, Lewis, Skamania—all of the Lower Columbia.

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BOLDT: You're an active boy. Thank you. Anyone else? Okay, we will – we have quite a bit of work to do. Is there enough that we can get within a week?

LEE: I would suggest that two weeks would probably be better. I also believe you have some pretty heavy agenda items for next week. Urban Holding is on the public hearing agenda, I believe. In terms of timing to complete testimony on this issue and perhaps get to deliberations, it might be best to give us a couple of weeks to do that.

BOLDT: What do we have for two weeks?

LOUISE RICHARDS: The Gorge; Biannual; Habitat; and Fire Department Annexation.

STUART: All in the public hearing?

MORRIS: We have long days for the remaining Tuesdays in April and the first couple of Tuesdays in May. So I don't know, but it might be wise for us to ask to have our afternoons freed, if they happen to be full.

STUART: Agreed.

BOLDT: Can we continue this to a date uncertain? Because I think there are some things that we need to –

LEE: If it's uncertain, we would have to re-notice and that would put us out at least a couple of more weeks.

STUART: Do you want to go two weeks and then just make our afternoon free for that, or one week, three weeks? I agree that we're probably going to have to make our afternoon...

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MORRIS: Next week is the 25th and we have an evening hearing on the habitat ordinance. That's going to be a long, grueling day as it is.

STUART: Yeah, so do you want to go two weeks from now?

BOLDT: Two weeks.

STUART: Then we can decide what's in morning and what's in afternoon.

BOLDT: Right.

STUART: Thank you, Mr. Chair. I move that we continue the public hearing on the wetlands ordinance to May 2 at a time to be determined.

LEE: No, I think you have to continue to 10:00 a.m.

STUART: Okay, at 10:00 a.m. then and we may just have to continue it. Okay.

MORRIS: Second.

BOLDT: Thank you. It's been moved and seconded to continue the wetlands ordinance until May 2, 2006 at 10:00 a.m. All those in favor say aye?

STUART: Aye.

MORRIS: Aye.

BOLDT: Aye. All opposed? Motion carried. (See Tape 267)

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MORRIS: Before we adjourn, if I might, Mr. Lee, on page 26, line 27, after the word "Preservation" I think your missing the word "which".

STUART: Yes. You're making a statement right now saying, "Preservation does not result in a gain of wetland acres..."

LEE: Well, it does not. You're basically protecting a wetland that is already there, except you are taking it out of harms way potentially.

MORRIS: But what you mean to say is that, "Preservation which does not result in a gain of wetland access, may result in a gain of functions." In any event, however we want to rearrange it, it doesn't work right now.

LEE: Very good.

BOLDT: Before we adjourn, I guess I have a question that I already presented for the habitat and the urban holding discussion: if you could within your department—or I have also talked with Mary Keltz, PIO Director—to come up with a chart so the public could clearly understand the sections; the old ordinance and the new ordinance. So we don't keep going back and forth and I think that could be done within two weeks. Also, if you have – there's really no one here that knows it, but for the people watching if you have changes in this language, please get us the changes. I come from the Legislature where I could care less if you like the ordinance, yes or no, but I at least want words. I'm a word guy and I'll go from there. So if you hate it that's fine, give me the words. If you love it, say you love it. Thank you. It sure helps us. With that, meeting is adjourned.

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COMMISSIONER COMMUNICATIONS

There were no comments.

2:00 P.M. PUBLIC BID OPENINGS

Present at bid opening: Louise Richards, Board of County Commissioners Office; and Mike Westerman and Allyson Anderson, General Services-Purchasing Department

BID OPENING 2437

Held a public hearing for Bid Opening 2437 – Vista Meadows Neighborhood Park. Mike Westerman, General Services, stated that the bid opening for BO 2437 had being delayed until May 2, 2006, at 1:00 p.m. (See Tape 267)

BID OPENING 2441

Held a public hearing for Bid Opening 2441 – Jail Cover Plates. Mike Westerman, General Services, opened and read a single bid and stated that it was the Purchasing Department's intention to award Bid 2441 on April 25, 2006 at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 267)

BID OPENING 2442

Held a public hearing for Bid Opening 2442 – Annual Slurry Seal Project. Mike Westerman, General Services, opened and read bids and stated that it was the Purchasing Department's intention to award Bid 2442 on April 25, 2006 at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 267)

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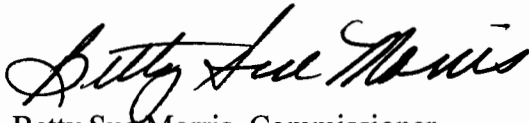
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BOARD OF COUNTY COMMISSIONERS

Marc Boldt, Chair



Steve Stuart, Commissioner



Betty Sue Morris, Commissioner

ATTEST:



Clerk of the Board

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